the same facts as in (1), except that the plaintiff attempts to cross the tracks at a public crossing and furthermore that although the engineer does not see his dangerous condition, he would have seen him, if he had exercised reasonable care in keeping a lookout. The logical and humane rule will charge the defendant with constructive knowledge of the plaintiff's peril.[8] Clearly, the breach of duty is subsequent to the plaintiff's negligence and becomes the proximate cause of the injury.

In *Townsend v. Butterfield*,[9] decided by the California Supreme Court, the court affirmed an instruction based on the last clear chance doctrine. The words of the lower court were: "The party who has the last clear opportunity of avoiding the accident notwithstanding the negligence of his opponent is considered solely responsible for it." The statement has the advantage of being short, but brevity in this instance is destructive to a fair statement of the rights of the parties. It could hardly be affirmed that the court in these few words called the attention of the jury to the most important elements of this doctrine, which have just been reviewed.

L. C.

LICENSES: EXEMPTION OF PUBLIC SERVICE COMPANIES FROM ALL FORMS OF LICENSES: SEPARATION OF STATE AND LOCAL TAXATION.—The extent of the amendment to the Constitution of California, providing for the separation of the sources of state and local taxation, has been again adjudicated by the Supreme Court of the state, this time through three decisions. In *Pacific Gas and Electric Company v. Roberts*,[1] it was determined by the court that the provision of the amendment, which declares that the gross income or revenue tax "shall be in lieu of all other taxes and licenses, state, county and municipal, upon the property . . . . of such companies"[2] has the effect of exempting these companies from the payment of the motor vehicle licenses, imposed by the

---

Fed. 41; Terre Haute I. & E. Traction Co. v. Latham (Ind., 1913), 101 N. E. 746; Green v. Los Angeles Ry. Co. (1904), 143 Cal. 31, 76 Pac. 719; Matteson v. S. P. Co. (1907), 6 Cal. App. 318, 92 Pac. 101.

[8] Everett v. St. Louis & S. F. Ry. Co. (1908), 214 Mo. 54, 112 S. W. 486; Louisville Ry. Co. v. Mitchell (1910), 138 Ky. 190, 127 S. W. 770; Nicol v. Oregon-Wash. R. & N Co. (1912), 71 Wash. 409, 128 Pac. 628; Fearons v. Kansas City Elevated Ry. Co. (1904), 180 Mo. 208, 79 S. W. 394; Bullock v. Wilmington & W. R. Co. (1890), 105 N. C. 180, 10 S. E. 988. Bourrett v. Chicago & N. W. Ry. Co. (Iowa, 1909), 121 N. W. 380, contains a full discussion. There are a number of cases which fail to recognize that in cases where a duty to keep a lookout exists, defendant will be charged with constructive knowledge. San Antonio Traction Co. v. Kelleker (1908), 48 Tex. Civ. App. 421, 107 S. W. 64; Dyerson v. Union Pac. Ry. Co. (1906), 74 Kan. 528, 87 Pac. 680; Thompson v. Los Angeles etc. Ry. Co. (1913), 165 Cal. 748, 134 Pac. 709.

[9] (Oct. 5, 1914), 48 Cal. Dec. 377, 143 Pac. 760.

[1] (Oct. 1, 1914), 48 Cal. Dec. 272, 143 Pac. 700.

[2] Cal. Const., Art. xiii, § 14.

state,[3] on vehicles used exclusively in their business. In *Southern Trust Company v. City of Los Angeles,*[4] it was declared that banking corporations are equally exempted from paying any local or state licenses, particularly for the right to conduct a banking business in a municipality. Finally, in *Hughes v. City of Los Angeles,*[5] it was held that the exemption extends even to the protection of the agents of insurance companies, for to charge an agent a license for the privilege of soliciting business is to impose the charge upon the principal. These decisions, taken in connection with two other decisions rendered within almost the last year upon the same question,[6] seem to determine the construction which must be put upon the phrase over which these cases have all arisen—that unscientific phrase "licenses upon the property". Some of the difficulties involved in the construction of this provision have been commented upon in a previous comment.[7] The fact that the court has found it necessary to consider this very clause again and again with the same arguments to overcome, suggests, in part, the confusion it has caused. However, as the matter now stands, the law is apparently settled to the effect that railway companies, insurance companies, gas and electric companies, banking companies, telephone and telegraph companies, and those other quasi-public service companies enumerated by the constitution, are subjected to no form of taxation, either upon their property or their agents, whether it be in the form of an excise or ad valorem tax, save that of the gross revenue percentage tax.

If we are to observe the letter of the law, it would seem that this exemption would also apply with equal force to licenses passed solely in the exercise of the police power.[8] The emphatic language in the first of the principal cases above mentioned, that the words *"all* licenses" (the italics are the court's) must be given meaning to avoid "an utter breakdown in our written language", seems to strengthen this contention. Granting that this is correct, and it would follow that these companies in question would pay no local dog licenses for watch-dogs used in the protection of their buildings, nor peddler licenses for the soliciting of trade, nor licenses for the display of advertising on bill-boards and in street cars, nor for the right to run a hotel for the benefit of employees with a bar room in connection, nor any other licenses passed for regulative purposes, providing that such charges were found to relate or fall upon

---

[3] 1913 Stats. Cal. 639.

[4] (Dec. 11, 1914), 48 Cal. Dec. 530, 145 Pac. 94.

[5] (Dec. 11, 1914), 48 Cal. Dec. 537, 145 Pac. 94.

[6] San Francisco v. Pacific Tel. and Tel. Co. (1913), 166 Cal. 244, 135 Pac. 971; Hartford Fire Ins. Co. v. Jordan (Jan. 17, 1914), 47 Cal. Dec. 175; and on rehearing, Hartford Fire Ins. Co. v. Jordan (July 28, 1914), 48 Cal. Dec. 145, 142 Pac. 839.

[7] (May, 1914), 2 Cal. Law Rev. 322.

[8] (May, 1914), 2 Cal. Law Rev. 322; Rapp & Son v. Kiel (1911), 159 Cal. 702, 115 Pac. 651.

"property, or any part thereof, used exclusively in the operation of their business in this state".[9] However, it is to be noted that the courts in California have uniformly distinguished local assessments, for street work, building of canals or sewers, or for other similar improvements, from taxes, on account of their peculiar nature and purpose and classified them more as a charge for benefits received.[10] Perhaps the courts will succeed, when the question arises as it soon must, in pointing out that licenses under the police power are not licenses at all and in no sense a form of taxation, but merely regulative charges or fees imposed for the protection of the public health and safety and to provide for the general welfare.[11] Considering the amendment as purely a revenue measure, concerned only with the taxation powers of the state and its various political divisions, it would not be difficult to read into the above constitutional provision some such distinction, particularly as the court has been so liberal in construing the same provision, when viewed from another angle. Such a construction is most desirable to save to the people one phase of that important and effective arm of the government known as the police power, that power, so commonly employed, of controlling and restricting dangerous and undesirable businesses by means of licenses.

M. C. B.

MINING LAW: LODES IN PLACERS: PRESUMPTION ARISING FROM LAPSE OF TIME.—May lapse of time, even in the absence of any statute of limitations, and without reference to any question of laches, constitute a sufficient defense to an action brought, or a claim initiated relying upon section 2333, Revised Statutes of the United States, if there were in fact "known lodes" at the time of the application for the placer patent? This question is answered

---

[9] Cal. Const., art. xiii, § 14. This point, too, has been recently adjudicated. For example, steamboats of a railway company not "used exclusively" in the operation of the business of the company should not be "included in the list of property whose sole and only tax is covered by the gross revenue and percentage". Lake Tahoe Railway and Transportation Co. v. Roberts (Oct. 5, 1914), 48 Cal. Dec. 381, 143 Pac. 786. A fortiori, railroad companies must pay, at least, such revenue licenses as are required by local authorities for the right to exhibit advertising cards, to conduct restaurants, news stands, cigar stands and the like in their stations. But quaere, when this right is sold to another, to what extent, if any, should the income thus realized in the nature of rentals be included in the gross revenue which is taxable solely under the constitution and which must arise from property used exclusively in the company's business?

[10] Holley v. County of Orange (1895), 106 Cal. 420, 39 Pac. 790; Taylor v. Palmer et al. (1866), 31 Cal. 240; Bauman v. Ross (1896), 167 U. S. 549, 42 L. Ed. 270, 17 Sup. Ct. Rep. 966.

[11] See Cooley on Taxation, 3rd ed., p. 1133 ff.; State ex rel Toi v. French (1895), 17 Mont. 54, 41 Pac. 1078, 30 L. R. A. 415; Johnson v. City of Great Falls et al. (1909), 38 Mont. 369, 99 Pac. 1059, 16 Ann. Cas. 974; Commonwealth v. Boyd (1905), 188 Mass. 79, 74 N. E. 255, 108 Am. St. Rep. 464.